

In response to this requirement, Applicants hereby elect Group II, claims 30-57 drawn to a method of forming a micromirror structure. This election is with traverse.

The Examiner's attention is drawn to MPEP 806.03:

**"Single Embodiment, Claims Defining
Same Essential Features**

Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

It is respectfully submitted that only a single embodiment of manufacturing a MEMS device is substantially disclosed in the specification, as shown in Figs. 2A-2F and 3A-3F. Independent claims 1, 10, 20, 30, and 44 all recite a hydrogen treatment of a first layer, i.e., a silicon layer, as the essential characteristic. It is therefore respectfully submitted that Groups I and II are not distinct from each other. Accordingly, should the Examiner determine that any claim patentably defines over the prior art, then all pending claims 1-57 should be considered and examined.

Election of Species Requirement

The Examiner has issued an Election of Species Requirement between the following species;

Species Ia: Claims 1-19, drawn to a species of a method of preventing peeling between two silicon layers;

Species Ib: Claims 20-29, drawn to a species of a method of forming a micromechanical structure.

It is noted that the election of species requirement is specific to Group I from the restriction requirement. Accordingly, because the Applicant has elected Group II, claims 30-57, it is respectfully submitted that no election of a species is necessary.

With regard to the election of species requirement, it is noted that the Examiner has alleged that claims 1-29 are directed to two patentably distinct species. A first species (Ia) is alleged to be defined by claims 1-19, and a second species (Ib) is alleged to be defined by claims 20-29. However, this election of species requirement is respectfully traversed. With regard to these claim species, Claim 20 should be generic for claims 21-57 because claims 30 and 40 disclose how to form a micromirror structure, which is also a micromechanical structure as recited in claim 20.

It is respectfully submitted that it should be no undue burden on the Examiner to consider all claims in the single application. Also, as noted above, it is respectfully submitted that neither the restriction requirement nor the election of species requirement of claims 1-57 is proper. Accordingly, the election of species and restriction requirements should be overcome and withdrawn.

In view of the foregoing amendments and remarks, favorable reconsideration and an early Notice of Allowance are earnestly solicited.

In the event that the Examiner persists in this requirement, Applicants reserve the right to file a Divisional application at a later time, if so desired.

In the event there are any outstanding matters remaining in this application, the Examiner is invited to contact the undersigned (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By Joe McKinney Muncy
Joe McKinney Muncy, #32,334

KM/asc
0941-0840P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000